

REMARKS

Applicant hereby acknowledges the Examiner's withdrawal of the previous objection to the specification due to the absence of a claim 21. Applicant further acknowledges the Examiner's removal of the rejection of claims 1-8, 10-17, 19-20 and 22-24 under 35 U.S.C. 103(a) over U.S. patent 6,605,344 to Ohba et al. in view of U.S. patent 5,069,946 to Moritani et al, and the removal of the rejection of claims 9 and 18 under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. and further in view of Reading.

The Examiner has withdrawn the finality of the previous rejection and issued the following new rejections.

The Examiner has rejected claims 1-8, 10-17 and 19-23 under 35 U.S.C. 103(a) over U.S. patent 6,605,344 to Ohba et al. in view of U.S. patent 5,069,946 to Moritani et al. It is respectfully submitted that the rejection is not well taken.

The present invention claims a packaged produce product comprising a package formed from at least one coextruded polyamide film comprising at least one first layer formed from a polyamide selected from the group consisting of nylon 6, nylon 66 and blends thereof, and at least one second layer of nylon 6,66 in contact with said first layer, said nylon 6,66 having a nylon 6 moiety and a nylon 66 moiety, and produce contained within said package, said package being formed from at least one polyamide film being heat sealed via said nylon 6,66 layer.

As previously submitted, Ohba, et al. show adjacent nylon layers, i.e. a substrate which may be nylon 6 and a plastic film layer which may be nylon 6,66. However, as the Examiner recognizes, Ohba, et al. do not suggest that these two layers may be co-extruded to each other. They may only be laminated, coated, dry laminated or extrusion coated one onto the other.

In the prior office action, the Examiner attempted to fill this void by pointing to Moritani, et al. for the proposition that co-extrusion is a known form of lamination. However, as previously submitted, this is incorrect. Coextrusion is not a known form of lamination, but rather is a distinctly different and unrelated technique used to combine film layers. In view of Applicant's comments in the response dated October 19, 2005 distinguishing coextrusion as a distinct process from lamination, the Examiner has withdrawn that prior rejection. The Examiner has now applied the same references and rejected the claims based on the new theory that Moritani, et al. teaches the interchangeable use of dry lamination or coextrusion in the making of a multilayered packaging film, either with or without tie layers. However, it is respectfully submitted that the Examiner is incorrect. The teaching in the Moritani, et al. reference that their multilayered film may be formed from either lamination or coextrusion for their own purposes does not establish them as interchangeable *per se*.

Coextrusion and lamination are distinctly different processes and a multilayered film formed by lamination is structurally different than a multilayered film formed by coextrusion. When forming a multilayered film by lamination, layers in a solid state are attached to each other by pressing the solid layers together under sufficient heat and pressure, usually with an intermediate adhesive to hold them together. This is very different than a multilayered film formed by coextrusion. In forming a multilayered film by coextrusion, the layers are joined together as molten polymers and then cooled. The material for the individual layers, as well as any optional layers, are fed into feeders of the extruders of like number, each extruder handling the material for one or more of the layers. The melted and plasticated streams from the individual extruders are fed into a single manifold co-extrusion die. While in the die, the layers are juxtaposed and combined, and then emerge from the die as a single multiple layer film of polymeric material. As a result of this coextrusion process, the individual layers of such a multilayered film are unified at the surfaces where they contact each other as polymer molecules from the molten polymer layers commingle with each other at their contact surfaces and at least partially fuse together. Importantly, this is a structure not obtained

by the mere pressing together of solid layers via lamination techniques. Regardless, it is urged that a combination of the teachings of Ohba, et al. with Moritani et al. would not make the claimed invention obvious to one skilled in the art.

It is submitted that the Examiner is reconstructing the art in light of Applicant's disclosure. The point in time that is critical for an obviousness determination is at the time the invention. "To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983).

Obviousness cannot be established by hindsight combination to produce the claimed invention. In re Gorman, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). It is the prior art itself, and not the applicant's achievement, that must establish the obviousness of the combination.

Both Applicant and the Examiner agree that Ohba, et al do not show coextrusion. Further, Moritani et al's fails to teach or suggest the coextrusion of a first layer of nylon 6, nylon 66 a blend thereof, and a second layer of nylon 6,66, in contact with said first layer, and thereby forming a package by heat sealing the polyamide film via said nylon 6,66 layer.

The Moritani et al. reference does describe the coextrusion of an EVOH-polyamide blend layer with a second layer that may be a nylon layer. However, this is very different than the claimed produce package wherein a layer of nylon 6, nylon 66 or blend of nylon 6 and nylon 66 is co-extruded with a layer of a nylon 6,66 copolymer. It is therefore submitted that the combination of Ohba et al and Moritani et al. does not suggest coextruding and contacting a first layer of nylon 6, nylon 66 or blends thereof, and a second layer of nylon 6,66.

With regard to claims 10 and 19, the mere fact that Ohba, et al shows a seal layer of nylon 6,66 does not mean that they inherently produce an *overall* film having a heat seal strength of the *overall* polyamide film of at least about 700 grams. This is especially true since Ohba, et al do not show first and second layers which are *coextruded*.

With regard to claims 11-12, 20 and 21, the showing of the sealing of a polyamide film to itself or two overlapping films by Ohba, et al is insufficient to reject these claims because the claims have a materially different structure, i.e. first and second layers which are *coextruded*. Likewise, with regard to claims 6-8 and 16-17, the thicknesses in and of themselves is insufficient to reject these claims because the claims have a materially different structure, i.e. first and second layers which are *coextruded*.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); Schneck v. Nortron Corp., 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). It is respectfully asserted that the invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made.

For these reasons it is submitted that the rejection of claims 1-8, 10-17, 19-20 and 22-24 under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. should be withdrawn.

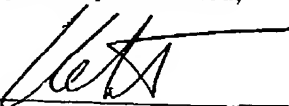
The Examiner has rejected claims 9 and 18 under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. and further in view of Reading (U.S. patent 3,038,811). It is respectfully asserted that this ground of rejection is not well taken.

The arguments over Ohba, et al in view of Moritani, et al. are repeated from above. Reading is cited to show then making of perforations in a food package. However, Reading relates to a materially different film material. Reading only shows a perforated

wrapper for food which is formed from non-resilient materials, i.e. *paper*, such as vegetable parchment, laminated to a *metal foil* such as aluminum. Reading does not show or suggest a perforated *nylon* film, much less a film composed of first and second nylon layers which are *coextruded*. It is submitted that the combination of Ohba, et al in view of Moritani, et al. and further in view of Reading is merely a reconstruction of the art in light of the Applicant's disclosure. For these reasons it is submitted that the rejection of claims 9 and 18 under 35 U.S.C. 103 over Ohba, et al in view of Moritani, et al. and further in view of Reading should be withdrawn.

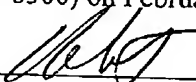
The undersigned respectfully requests re-examination of this application and believes it is now in condition for allowance. Such action is requested. If the Examiner believes there is any matter which prevents allowance of the present application, it is requested that the undersigned be contacted to arrange for an interview which may expedite prosecution.

Respectfully submitted,



Richard S. Roberts
Reg. No. 27,941
P.O. Box 484
Princeton, New Jersey 08542
(609) 921-3500
Date: February 3, 2006

I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office (FAX No. 571-273-8300) on February 3, 2006.



Richard S. Roberts
Reg. No. 27,941